



**UNITED STATES ENVIRONMENTAL PROTECTION AGENCY**  
REGION 5  
77 WEST JACKSON BOULEVARD  
CHICAGO, IL 60604-3590

**MAY 11 2011**

REPLY TO THE ATTENTION OF:

**WW-16J**

U.S. Army Corps of Engineers, Louisville District  
ATTN: George Delancey, CELRL-OP-FW  
P.O. Box 489  
Newburgh, Indiana 47630

Re: Public Notice No. LRL-2010-218-gjd / Liberty Mine

Dear Mr. Delancey:

The United States Environmental Protection Agency has reviewed the subject public notice issued on July 14, 2010 and the response letter to EPA comments dated November 10, 2010, and the revised application received dated April 29, 2011. The applicant, Liberty Mine, LLC, propose a new surface mine (Liberty) in Warrick County, Indiana, which is northeast of Evansville. The project area is 1,646 acres and lies within the Pigeon Creek Watershed. Pigeon Creek is a tributary of the Ohio River. The proposed mining activity would impact 35.3 acres of forested wetland, 70.5 acres of non-forested wetland (63.3 palustrine emergent (PEM), 0.8 palustrine scrub/shrub (PSS), and 6.4 palustrine unconsolidated bottom (PUBG)), 14,131 feet of perennial and intermittent stream (of which 8,948 is perennial), and 6,212 feet of ephemeral stream. We offer the following comments based on our review.

*Stream Impacts*

There is a typo in the application on page 64. Table 3A should show the impact to intermittent streams is now 5,183 linear feet.

*Stream Evaluations – EPA macroinvertebrate index of biotic integrity (mIBI), fish index of biotic integrity (fIBI), and Rosgen Stream Evaluations*

On page 87 of the application the applicant states “Biology, including MIBI, FIBI, and water quality was also assessed as required by the permit, but are not pertinent to success.” and on Page 90, the “Stream Success Criteria” does not include a comparison of the baseline biology and chemistry with the post mitigation monitoring results. As stated in our previous letter, biological, chemical, and physical monitoring results should be used to determine stream and wetland mitigation success by comparing baseline, during and post mitigation monitoring results. Therefore, we recommend that the performance standards include comparisons of the baseline with the post-mitigation monitoring results, using an overall improvement of biological communities, and water quality, as

well as channel stability, as the goal for achieving mitigation success. We also recommend that these performance standards become part of the Special Conditions of the 404 permit issued for this project.

*Long Term Protection*

EPA has not received specific information regarding a protection instrument for the project area, but understands that the applicant has proposed a Restrictive Covenant for both the onsite stream and wetland mitigation and the off-site wetland mitigation. As you know, the Federal Mitigation Rule requires that all mitigation areas be protected in perpetuity by a protection instrument. Therefore, we recommend that the requirement to secure a protection instrument become part of the Special Conditions of the 404 permit issued for this project.

EPA objects to the issuance of the permit unless the special conditions include the items above regarding performance standards and long term protection. Thank you for the opportunity to provide comments on the public notice and permit documents. If you have any questions, please contact Scott McWhorter at (312) 886-6100.

Sincerely,

A handwritten signature in black ink, appearing to read "Peter Swenson". The signature is fluid and cursive, with the first name "Peter" and last name "Swenson" clearly distinguishable.

Peter Swenson, Chief  
Watersheds and Wetlands Branch